

Exhibit 1

Appeal No. 2011-1403

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

01 COMMUNIQUE LABORATORY, INC.

Plaintiff-Appellant,

v.

LOGMEIN, INC.

Defendant-Appellee,

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
VIRGINIA IN CASE NO. 1:10-cv-01007, SENIOR JUDGE CLAUDE M. HILTON

BRIEF OF PLAINTIFF-APPELLANT
01 COMMUNIQUE LABORATORY, INC.

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Accordingly, this Court should construe “location facility” as: “computer software associated with the locator server, which may comprise one or more computers.” A construction of “locator facility” that merely repeats the limitations set out explicitly elsewhere in the claim is improper.

IV. Summary Judgment Was Improper Even Under The District Court’s Flawed Construction Of “Location Facility,” Because Substantial Expert Testimony Supported A Finding That The Accused Products Contained All Limitations Of The Claims At Issue

The district court did not resolve or even address significant material disputed facts in the case, including expert testimony regarding what it means for a software facility to “itself” perform certain stated functions. Even if the district court’s claim construction were accepted, it would still be inappropriate to grant summary judgment in light of the material disputed facts.

Summary judgment is appropriate only when it has been shown “that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). The burden of showing the absence of a genuine issue of material fact rests with the moving party. *Id.* A fact is material if its resolution will affect the outcome of the case. *Anderson v. Liberty Lobby*, 477 U.S. 242, 248 (1986). Moreover, the court must afford all reasonable inferences and construe the evidence in the light most favorable to the non-moving party. Summary judgment

judgment in 01 Communique's favor that LogMeIn's system practices the claimed "location facility," or alternatively this case should be remanded for trial.

Date: July 25, 2011

Respectfully submitted,

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